

# **EXHIBIT C**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 07-7990-GHK (CTx) Date December 20, 2007  
Title *Paul, Hastings, Janofsky & Walker, LLP v. Kat House Productions, LLC, et al.*

Presiding: The Honorable GEORGE H. KING, U.S. DISTRICT JUDGE

Beatrice Herrera	N/A	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:

(none)

Attorneys Present for Defendants:

(none)

Proceedings: (In Chambers) Order to Show Cause re: Subject Matter Jurisdiction

On November 7, 2007, Plaintiff Paul, Hastings, Janofsky & Walker, LLP, filed the above-captioned Complaint in California state court. On December 7, 2007, Defendants Kat House Productions, LLC d/b/a Surf Chick, Kathleen Merrick, Patricia J. Wagner, Aurora Contrares ("Defendants") filed a Notice of Removal in this Court. However, as a court of limited jurisdiction, *see Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994), we must determine the issue of subject matter jurisdiction before reaching the merits of a case. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998).

Defendants state that they filed an action against Plaintiff for legal malpractice in the United States District Court for the Southern District of New York on November 1, 2007 ("New York action"). Defendants further state that Plaintiff's claims here constitute compulsory counterclaims in the New York action under FED. R. CIV. P. 13. Defendants argue that because the claims are compulsory counterclaims in a federal action, we have supplemental jurisdiction under 28 U.S.C. § 1367. Defendants further argue that jurisdiction is proper under 28 U.S.C. § 1338 because Plaintiff's right to relief depends on resolution of issues under federal trademark law.

We cannot exercise supplemental jurisdiction over claims unless they are so related to a claim over which we have original jurisdiction that they form part of the same case or controversy. 28 U.S.C. § 1367(a). If we are to exercise supplemental jurisdiction over the removed claims, there must be a civil action in which we have original jurisdiction. No showing has been made that we have original jurisdiction over any claims.

We do have original jurisdiction "of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks." 28 U.S.C. § 1338(a). However, there has also been no showing that Plaintiff's claims arise under any federal statute concerning intellectual property. Rather, the claims in the Complaint appear to state common law contract and contract-related claims. Although Defendants assert that the claim involves questions of federal trademark law, we do

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not have jurisdiction over an action that "fundamentally asserts contract claims and only incidentally involves the Lanham Trade-Mark Act." *Postal Instant Press v. Clark*, 741 F.2d 256 (9th Cir. 1984).

The party seeking to establish jurisdiction bears the burden of proving such. *Kokkonen*, 511 U.S. at 377. Therefore, Defendants are ORDERED TO SHOW CAUSE, in writing, WITHIN TWELVE DAYS, as to why this action should not be remanded because we lack subject matter jurisdiction.

Defendants' failure to timely and adequately show cause as required herein shall be deemed their admission that we lack subject matter jurisdiction. In that event, this action shall be remanded for lack of subject matter jurisdiction.

IT IS SO ORDERED.

Initials of Deputy Clerk

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